

In re) Fair Hearing No. 9612
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare terminating her ANFC benefits because of her receipt of a lump-sum inheritance. The issue is whether part of the lump-sum can be "offset" because it was "unavailable" to the family for circumstances beyond its control.

The petitioner and her children are ANFC recipients. In November, 1989, the petitioner received a lump-sum inheritance of \$6,000.00. Of this, she paid an overdue phone bill of \$765.54 plus a \$575.00 deposit to have her phone service reconnected. At issue in this case is whether either or both of these payments can be considered "unavailable to the family for circumstances beyond its control" within the meaning of W.A.M. § 2250.1(2) (see *infra*).¹

One of the petitioner's children, a 17-year-old-son, has been placed through special education at a residential school in Maine. He has attended this school for the last two years. The son is on medication which frequently requires adjustment and evaluation. The petitioner must be notified and approve any decision by the school (the school has trained medical

personnel on its staff) to alter her son's medication. The petitioner is also involved in educational decisions regarding her son, and she and the school have found it beneficial for the petitioner to have regular phone contact with her son.²

In the Spring of 1989, the petitioner allowed her neighbor to use her phone on a frequent basis. Unbeknownst to the petitioner, the neighbor ran up \$765.54 in long-distance charges. When the petitioner got the bill, the neighbor refused to pay (the neighbor is also on ANFC).³ Inasmuch as the petitioner was unable to pay the bill, her phone service was disconnected. Before it would reconnect service, the phone company demanded not only full payment of the arrearage, but also a deposit of \$575.00. The petitioner was without phone service from June to November, 1989, when she paid the phone company in full (arrearages and deposit) from her lump-sum inheritance.

During the time she was without phone service the petitioner had to use the phones of friends and family members. The only phones she could use to make long distance calls and to receive phone messages (mostly to and from her sons school) were at her mother's and sister's houses, both of which were located some miles from the petitioner's home. The petitioner doesn't have a car, so she also had to rely on her relatives to give her the messages and for transportation to make these calls. This

arrangement was both inconvenient and straining on the petitioner's relationships with her family.

ORDER

The department's decision is modified. The petitioner's lump-sum inheritance shall be "offset" by the \$1,340.54 the petitioner spent to have her phone service reconnected. The matter is remanded to the department to determine the period of the petitioner's ineligibility for ANFC in accord with this decision.

REASONS

Ordinarily, when an individual receives a lump-sum payment her household becomes ineligible for ANFC for the number of months obtained by dividing the household's monthly "standard of need" (which is set by regulations--see W.A.M. § 2245.2) into the total amount of the lump-sum. W.A.M. § 2250.1. However, the same regulation allows the department to "offset" amounts against the lump-sum in the following three instances:

- 1) An event occurs which, had the family been receiving assistance, would have changed the amount paid;
- 2) The income received has become unavailable to the family for reasons beyond their control;
- 3) The family incurs and pays for medical expenses which offset the lump-sum income.

In Fair Hearing Nos. 6891, 8608, 9072, and 9273, the Board has examined the requirements of the above "offset" provisions. In those cases it held that subparagraph 2 of §

2250.1 (supra), the only one at issue both here and in the above cited Fair Hearings, establishes a two-part test: 1) unavailability, and 2) due to circumstances beyond the control of the family. Regarding the first part of the test, the Board ruled that payments by an individual from a lump-sum to satisfy pre-existing legal obligations rendered that portion of the lump-sum "unavailable" to the individual within the meaning of 2250.1(2) (supra). Regarding the second part of the test (i.e., whether the unavailability was "beyond the control of the family"), the Board in those Fair Hearings held the determining factor to be "whether or not it was necessary to the petitioner to incur and pay for these bills".

In this case it must be concluded that the money the petitioner spent to have her phone reconnected met both of the above "tests". It is concluded that the petitioner's circumstances (see supra) establish that phone service is a "necessity", that its disconnection was not her fault, and that it was necessary for her to spend \$1,340.54 of her inheritance to maintain that necessity.⁴

Thus, the requirements of the offset provisions of W.A.M. 2250.1(2) are met. The department's decision is modified accordingly.

FOOTNOTES

¹In addition to her telephone bills, the petitioner spent part of the inheritance on other expenses. At the hearing, however, she conceded that none of these other payments would qualify for an offset under W.A.M. 2250.1.

²The petitioner submitted the following letter from her son's "case manager" at the school in Maine:

It is very important that we be able to contact [petitioner] because her son [son's name] is in residential care with the Homestead Project. We must be able to reach [petitioner] by phone for medical emergencies.

It is also very important that [son's name] be able to contact his mother at least once a week for therapeutic purpose.

³The petitioner has filed suit in small claims court against her neighbor, but as a practical matter concedes she has little chance of collecting on any judgement she might obtain.

⁴This is not to conclude that in applying W.A.M. § 2250.1(2) phone service, per se, is a "necessity"; only that the petitioner has demonstrated that it is for her.

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